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Berkshire L. Ins. Co., 93 U. S. 284; *De Gogorza v. Knickerbocker L. Ins. Co.*, 65 N. Y. 232. And where the stipulation "sane or insane" or its equivalent is omitted the act is not suicide within the meaning of the policy. Even though the insured intends his death, if by reason of insanity he cannot appreciate the moral character of his act, or is impelled by an uncontrollable impulse. *Ins. Co. v. Terry*, 15 Wall. 580; *May, Ins.* (3d ed.), vol. 1, sec. 307. In England the distinction is not recognized, and although there is no clause as to insanity in the policy, still the act will be considered suicide when done voluntarily, in the pursuance of an intelligent purpose, even though by reason of insanity the insured cannot understand the moral character of his act. *Bowdlaile v. Hunter*, 5 M. & G. 639. English rule is followed in Massachusetts. *Cooper v. Mass. Mut. L. Ins. Co.*, 102 Mass. 227.

NEGLECT—CARRIERS OF PASSENGERS—INJURIES.—*TOBENG v. METROPOLITAN ST. RY. CO.*, 76 N. Y. SUPP. 411.—Plaintiff was injured by the premature starting of a street car, which, while it was slowly moving, he attempted to board. *Held*, that an instruction that, in all ordinary cases, to attempt to board a moving public vehicle is negligent was erroneous.

The instruction expresses the established rule in the case of steam railroads. *Missouri Pac. R. R. Co. v. Texas R. R. Co.*, 36 Fed. 879; *Bacon v. Delaware R. R. Co.*, 143 Pa. St. 14. A distinction has often been made where the motion was slight; *B. & O. R. R. Co. v. Kane*, 64 Md. 11; although the only decision to that effect in this country since 1894, *Walthers v. Chic. & N. W. R. R. Co.*, 72 Ill. App. 354, has been overruled. *C. & A. R. R. Co. v. Flaharty*, 96 Ill. App. 563. But this rule does not apply to street railroads; *Corbin v. West End St. R. R. Co.*, 154 Mass. 197; and the decisions to that effect are supported by abundant text authority. *Shearm. & Red., Neg.*, sec. 282; 3 *Thomp., Neg.*, secs. 35, 65. Most of the cases cited to uphold the opposite view involve some other element of negligence. *Dietrich v. St. R. R. Co.*, 58 Md. 347; *Reddington v. Traction Co.*, 132 Pa. St. 154.

NEGLECT—DANGEROUS PREMISES—RAILROAD TURNTABLE.—*C., B. & Q. R. R. Co. v. KRAYENBUHL*, 91 N. W. 880 (NEB.).—A child of four years was injured while playing on a turntable. *Held*, that the owners of the turntable were negligent, in that it was not kept securely locked.

The general rule is that one who maintains on uninclosed premises dangerous appliances of a nature likely to attract children in play is liable to a child injured thereby, although trespassing. *R. R. Co. v. Stout*, 17 Wall 657; *R. R. Co. v. McDonald*, 152 U. S. 262. The presence of the children must have been reasonably anticipated. *Phila., etc., R. Co. v. Hummell*, 44 Pa. St. 375. It has, on the other hand, been held that there is no liability unless the negligence may be considered as equivalent to a wanton injury. *Shea v. Gurnly*, 163 Mass. 184; *Walsh v. Fitchburg R. Co.*, 145 N. Y. 301. And the general rule that there is no duty to trespassers has been applied in the case of children. *Peters v. Bowman*, 115 Cal. 345; *Clark v. Manchester*, 62 N. H. 577. As stated in the opinion, there is a so-called "doctrine of the turntable cases," in line with the present decision. *R. R. Co. v. Stout* and *R. R. Co. v. McDonald*, *supra*. This has been affirmed in Ohio, Georgia,

and several Western States, and repudiated in New York, Massachusetts, New Hampshire, and New Jersey.

NOTES—VALIDITY—CONSIDERATION PARTLY ILLEGAL.—*DOUTHART v. CONGDON*, 64 N. E. 348 (ILL.).—Where a city ordinance prohibited brokers from doing business without a license, notes given to the brokers in settlement of business transacted by them for the makers, including commission, were *held*, absolutely void, the partial illegality of consideration vitiating the whole.

Where two or more notes are given for an indebtedness, part of which was incurred for an illegal consideration, the law seems uncertain whether the total amount should be vitiated or not. *Carradine v. Wilson*, 61 Miss. 573, rules that any note larger than the illegal consideration may be applied thereto and recovery had on the others. When considerations can be separated, recovery may be had *pro tanto* as far as it is founded on a valid consideration. *Graves v. Safford*, 41 Ill. App. 659. The court here, however, has overlooked these distinctions and applied the well-established rule that where part of the consideration is illegal the whole is void as being inconsistent with law and public policy. *Scott v. Gillmore*, 3 Taunt. 226; *Perkins v. Cummings*, 68 Mass. 258.

NUISANCE—ACTION BY LESSEE—LANDLORD AND TENANT.—*BLY v. EDISON ELECTRIC ILLUMINATING Co.*, 64 N. E. 645 (N. Y.).—A tenant in possession of premises injuriously affected by the operation of an electric lighting plant can sue to abate the same, though the lease was made during the existence of the nuisance. *Parker, C. J., and Haight, J., dissenting.*

This is the first departure of the New York courts from the doctrine of *Kernochan v. R. R. Co.*, 159 N. Y. 568. In that case it was held that a tenant, who renewed his lease during the existence of a nuisance caused by an elevated railroad, could not bring an action to abate the same, for he must be presumed to have accepted the lease at a lower rent. The court refuses to place that construction on this case because it was not intended to be applied to the general law of nuisances, but to a condition created by the operation of elevated railroads, which have no parallel in our jurisprudence. The rule of the *Kernochan* case has been applied in New York where the cause of the injury was a polluted stream (*Yoo v. Rochester*, 92 Hun. 481), and a tannery (*Frances v. Schoellkopf*, 53 N. Y. 152). Also in Massachusetts, where the injury was caused by an individual. *Baker v. Sanderson*, 3 Pick. 348. The principal case, however, is well considered, and the distinction appears to be just and proper.

PRINCIPAL AND SURETY—PAYMENT OF USURIOUS DEBT BY SURETY—ESTOPPEL OF PRINCIPAL.—*BLAKELEY ET AL. v. ADAMS*, 68 S. W. 473 (Ky.).—*Held*, that a principal is not estopped to set up usury in the original debt, when sued by the surety on a contract for indemnity, unless he stood by and permitted the surety to pay the debt in ignorance of the fact that it contained usury. *Paynter, Hobson and White, JJ., dissenting.*

This decision seems unsupported by sound reason or authority. The universal rule is that the principal is estopped to plead usury against his surety, unless the surety was privy to the usury. *Maples v. Cox*, 74 Ga. 701; *Turman v. Looper*, 42 Ark. 500. So where one became surety in ignorance of usury in the debt, but paid with knowledge, he could recover of the principal the whole amount paid unless he paid contrary to principal's order.